

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up)	WC Docket No. 11-42
Reform and Modernization)	
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45

**THE TELECOMMUNICATIONS REGULATORY BOARD OF PUERTO RICO’S
RESPONSE TO PETITION FOR WAIVER OF SECTION 54.410(f) OF THE
COMMISSION’S RULES FILED BY PR WIRELESS, INC. d/b/a OPEN MOBILE**

The Telecommunications Regulatory Board of Puerto Rico (“Board”), through undersigned counsel, responds to the August 16, 2012 “Petition for Waiver of Section 54.410(f) of the Commission’s Rules” (“Petition”) filed by PR Wireless with the Federal Communications Commission (“Commission”).¹

The Board takes no position on PR Wireless’ Petition, but submits this filing to clarify and expand on the comprehensive efforts the Board has undertaken to eliminate waste and abuse in the Lifeline program in Puerto Rico, to protect the beneficiaries of the Lifeline program, and to protect the public fisc.

In its Petition, PR Wireless avers that its “subscribers were subjected to a rigorous, indeed overly aggressive, duplicate elimination process resulting in thousands of de-enrollments.”² PR Wireless mischaracterizes the nature of the Board’s review and the effect of

¹ *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service*, Petition for Waiver of Section 54.410(f) of the Commission’s Rules, WC Docket No. 11-42 *et al* (dated August 16, 2012).

² *Petition* at i.

that review on eligible Lifeline recipients. Contrary to PR Wireless' representation, the Board has gone to great lengths to ensure that eligible recipients do not lose benefits and that they have a simple and expeditious means to retain benefits if they believe that they have been disqualified inappropriately.

As the Board has shown in prior comments,³ while its enabling legislation required "permanent ineligibility"⁴ for those consumers found to be receiving an improper benefit, the Board initially reduced this period to one year, then to four months, and then, after finding that most of the affected residents were receiving multiple benefits because of improper conduct by ETCs, eliminated the period of disqualification altogether.⁵

The Board's prior comments also showed that a Lifeline beneficiary could petition the Board and show why he/she should continue receiving benefits, and that the Board had established an expedited appeal process to review and decide these claims. The Board explained that hundreds of residents had already invoked this process.⁶

³ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012); Reply Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 19, 2012).

⁴ 27 L.P.R.A. § 269e(11)(3).

⁵ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), Exhibit C.

⁶ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), at 8.

The Board also showed that the Commission's Lifeline Order supported those jurisdictions that had moved forward with their own Lifeline audit mechanisms,⁷ and that the Board's actions in refining the list of eligible Lifeline recipients was wholly in accord with the Commission's guidance.⁸

I. Introduction

The Board is the agency responsible for regulating telecommunications and information services in Puerto Rico.⁹ It has a statutory mandate from the Puerto Rico Legislative Assembly to "preserve and promote universal service through predictable, specific and sufficient support mechanisms"¹⁰ while ensuring that the Lifeline subsidy is limited to "a single wireline telephone line or to a single wireless service for the family unit"¹¹ and that there are penalties "established in those cases in which citizens attempt to receive benefits to which they are not entitled."¹² In discharging its statutory obligation, the Board has been taking steps to reduce from its Lifeline rolls those residents who are improperly receiving double (or triple or more) benefits per person or family unit. The Board's ongoing effort balances the need to eliminate waste, fraud, and abuse, and its statutory obligation to ensure the residents of Puerto Rico are not deprived of service.

⁷ *Lifeline Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (Rel. Feb. 6, 2012), at ¶ 221.

⁸ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), at 11-13.

⁹ 27 L.P.R.A. § 265 *et seq.* ("Law 213").

¹⁰ 27 L.P.R.A. § 269e(a)(1).

¹¹ 27 L.P.R.A. § 269e(d)(3).

¹² 27 L.P.R.A. § 269e(d)(8).

As explained in more detail below, any resident who receives notice that he/she risks losing multiple Lifeline benefits can, within 20 days, seek reconsideration by filing a form explaining why he/she should continue receiving that duplicate benefit. Hundreds of residents have already invoked this process, and the Board remains ready, willing, and able to process any and all other requests.

II. The Board Has Acted In Furtherance Of Its Statutory Mandate Since Its Creation In 1996

In 1996, recognizing the fundamental changes in telecommunications regulation occurring in the United States, the Puerto Rico Legislative Assembly enacted the Puerto Rico Telecommunications Act to establish the Board and charge it with protecting the residents of Puerto Rico and ensuring a pro-competitive telecommunications market.¹³ Law 213 makes it the public policy to:

- provide universal service at a fair, reasonable, and affordable rate for all citizens;¹⁴
- establish specific, predictable, and sufficient support mechanisms to preserve and develop universal service;¹⁵
- guarantee all subscribers that service shall not be discontinued unless there is just cause, and in each case, only after due notice.¹⁶

In discharge of the statutory obligation to provide fair, reasonable and affordable service, the Board is statutorily obligated to “preserve and promote universal service through predictable, specific and sufficient support mechanisms.”¹⁷ Accordingly, the Legislative Assembly has

¹³ 27 L.P.R.A. § 265 *et seq.*

¹⁴ 27 L.P.R.A. § 265(b).

¹⁵ 27 L.P.R.A. § 265(d).

¹⁶ 27 L.P.R.A. § 265(t).

¹⁷ 27 L.P.R.A. § 269e(a)(1).

enacted comprehensive rules and procedures governing the Lifeline program.¹⁸ For example, the Legislative Assembly authorized the Board to amend its regulations to “contain, among other things, the penalties to be established in those cases in which the citizens make an attempt to receive benefits to which they are not entitled.”¹⁹

Since its creation, the Board has undertaken major initiatives to discharge its statutory mandate; has presided over interconnection arbitrations and approved interconnection agreements; has conducted a major proceeding on reducing intrastate access rates; has consistently advocated on behalf of the telecommunications consumers of Puerto Rico; and has conducted multiple proceedings related to the protection of a competitive environment in Puerto Rico.

The Board’s authority to act for the benefit of the consumers of Puerto Rico has been confirmed by numerous courts.²⁰ During its 16-year history, the Board has overseen and managed a transition from a telecommunications market dominated by a government-owned monopoly to one characterized by competition and increasing sensitivity to the right of consumers to expect consistent high-quality service. Puerto Rico Telephone Company, Inc.

¹⁸ *Id.* at § 269e.

¹⁹ *Id.* at § 269e(d)(8).

²⁰ *See, e.g., Puerto Rico Telephone Company, Inc. v. Telecommunications Regulatory Board of Puerto Rico*, 665 F.3d 309 (1st Cir. 2011) (affirming the Board’s decision on multiple issues, including its authority to adopt liquidated damages and its TELRIC application and rejection of an ILEC’s argument that would have led to higher costs); *Centennial Puerto Rico License Corp. v. Telecommunications Regulatory Board of Puerto Rico*, 634 F.3d 17 (1st Cir. 2011) (holding that the Board was correct in all its decisions, including requiring an ILEC to take steps to avoid charging a CLEC an unnecessary fee); *WorldNet Telecommunications, Inc. v. Puerto Rico Tel. Co.*, 497 F.3d 1 (1st Cir. 2007) (upholding Board’s authority to impose measures to improve overall performance); *Puerto Rico Tele. v. Telecommunications Reg. Bd.*, 189 F.3d 1, 7 (1st Cir. 1999) (confirming the Board’s authority to act for the benefit of consumers in Puerto Rico).

(“PRTC”), once a government-owned carrier, has been privatized. Since privatization, substantial progress has been made in improving the quality of service.

In addition to acting at the Commonwealth level, the Board has repeatedly acted to protect the residents of Puerto Rico by participating in proceedings at the Commission. For example, in WT Docket No. 06-113, it submitted comments on the proposed transfer of PRTC to America Móvil, asking the Commission to make sure that America Móvil’s commitment to invest in Puerto Rico was real, quantifiable, and verifiable.²¹ The Commission thereafter approved the transfer, but required that America Móvil invest \$1 billion over five years to improve service in Puerto Rico.²² The Commission also required America Móvil to provide “a written report to the Commission on an annual basis describing the progress it has made in deploying infrastructure used to provide basic telephone and broadband services in Puerto Rico. This report, which shall include quantifiable and verifiable data shall be due to the Commission on December 31 of each calendar year.” *Id.*

The Board has also submitted comments in the Commission’s docket examining whether Puerto Rico warranted an insular mechanism²³ and in other dockets, urging the Commission to act for the protection of the residents of Puerto Rico.²⁴

²¹ See July 14, 2006 Petition to Deny.

²² *Application for Authority to Transfer Control of Telecomunicaciones de Puerto Rico, Inc.*, 22 FCC Rcd 6195 (2007).

²³ See October, 9, 2008 letter, May 26, 2006 Reply Comments, April 15, 2005 letter in Federal-State Joint Board on Universal Service, High Cost Universal Service Support (CC Docket No. 96-45 and WC Docket No. 05-337).

²⁴ See June 4, 2008 letter in CC Docket No. 97-80 (urging the Commission to grant the requested waiver of Choice Cable TV for the benefit of the consumers in southwestern Puerto Rico); March 19, 2007 Comments in CS Docket No. 97-80 (urging the Commission to grant a § 76.1204(a)(1) for the benefit of Puerto Rico consumers).

III. The Board's Lifeline Docket

Through the provisions of the Universal Service Bylaws of January 14, 2010, Ruling No. 7795, the Board implemented new rules for the State Universal Service Program, which comprises the provision of basic quality telecommunication services on Puerto Rico for its citizens at a reasonable and affordable price, as established by Law 213²⁵ and the Federal Communications Act of 1934²⁶.

To protect the Universal Service Funds of Puerto Rico, the Board ordered the ETCs to disclose and provide, on a quarterly basis, month-by-month information of the users of the Lifeline and Linkup programs.²⁷ As a result, the Board became aware of many cases in which subscribed participants were receiving service from more than one carrier. This is very likely an illegal erosion of public funds.

On January 27, 2011, the Board issued a Resolution and Order in which it began an audit into the duplication of Lifeline services to certain recipients. In addition, the Board notified the ETCs that it would be taking action to prevent unlawful reimbursements.

On July 13, 2011, the Board adopted new interim rules that ratified existing requirements of reporting, implemented additional procedures, and added additional responsibilities to the process of providing the information requested regarding the Lifeline and Linkup services.²⁸ The

²⁵ 27 L.P.R.A. § 265 *et seq.*

²⁶ 47 U.S.C. § 154 *et seq.*

²⁷ Among its resolutions and orders related to the request of program users' information, the Board issued a Resolution and Order on September 22, 2010 in which it orders the ETCs to disclose the information for the months of July, August, October and November 2009 and January, February, April and May 2010, and to prospectively inform, stating on the quarter that begins on September 2010, the information required on a month by month basis.

²⁸ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless,

Board's interim rules required the ETCs to send, to the Board: (a) Social Security number of the user; (b) first name and the two last names; (c) physical address; and (d) subscription date, among other information, so that the Board could assemble a database.

The Board's interim rules also provided that, in a family unit, if two or more people were receiving Lifeline funds, then the person who began receiving funds first in time would continue receiving the funds for the unit, but the remaining recipients would no longer be able to receive funds. The Board's interim rules also provided that, if a single person was receiving multiple benefits, then he or she would no longer receive any funds for one year.

The Board's interim rules provided, however, that any person who was in danger of losing its benefit could appeal that decision at the Board. The Board established a process that allowed customers to come to the Board for an expedited proceeding under which the Board would consider whether the person should continue receiving funds, even if not otherwise eligible to do so, and would provide a determination regarding eligibility within a month.

In January 2012, the Board advised the ETCs that it would begin fining them, as allowed under Law 213, because they: (a) had not sent letters to their ineligible Lifeline customers; (b) were not submitting data in the format requested by the Board; and (c) were not submitting timely reports to the Board. The second omission was particularly troubling because the data being submitted by the ETCs was being used by the Board to determine additional ineligible recipients.²⁹

Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), Exhibit A.

²⁹ The Commission's February 6, 2012 Lifeline Reform Order noted the importance of similar information: "[t]he database cannot serve its intended purpose unless ETCs (or states, where enrollment is performed by a state agency or third party) populate the database with the information necessary to detect duplicate support." *Lifeline Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Report and Order and Further Notice of Proposed

On February 17, 2012, the Board met with representatives of most of the ETCs. Each of the ETCs, including Sprint, PRTC/Claro, AT&T, OpenMobile and T-Mobile, and the Board agreed that:

- the ETCs would send letters to their ineligible customers;
- the ETCs would submit the required reports to the Board, in the format required by the Board, on the deadlines set by the Board;
- the ETCs would follow the other requirements of the Board's regulation;
- the Board would hold any fines in abeyance until April 2012 and, if the ETCs complied with the terms of the agreement, the Board would begin releasing Lifeline funds.³⁰

The Board also determined, at the February 17 meeting, to reduce the amount of time an ineligible subscriber was barred from receiving funds from 12 months to four months.³¹ Thereafter, the ETCs sent their ineligible customers letters explaining the ongoing process and their right to seek immediate review at the Board. Finally, on March 7, 2012, the Board determined that a customer who had been receiving multiple benefits could remain with the service to which the subsidy was first applied.³² Thus, ultimately, the Board concluded that,

Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), at ¶ 184. *See also id.* at ¶ 219 (“we must take steps now to reduce the amount of waste, fraud and abuse in these programs, and that necessarily includes the creation of a database to identify and eliminate duplicate subscriptions”).

³⁰ Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), Exhibit B.

³¹ *Id.*

³² Comments of the Telecommunications Regulatory Board of Puerto Rico In Response to the Emergency Petition for Declaratory Ruling and Interim Relief Filed by TracFone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed March 9, 2012), Exhibit C.

even if a subscriber was found to be receiving improper benefits, the subscriber could retain its benefits, but only to the extent allowed by law.

Furthermore, any person who has received notice of de-enrollment of multiple benefits can appeal that decision at the Board. Indeed, the Board's appeal process in this regard, which was contained in its interim rules first promulgated in 2011, are no different from the process set forth in the Commission's February 2012 Lifeline Reform Order. There, the Commission codified a rule "limiting Lifeline support to a single subscription per household," but, "recognizing that there are instances where multiple households (*i.e.*, families) reside at the same address," it "implement[ed] procedures to enable applicants in such circumstances to demonstrate at enrollment that other Lifeline recipients residing at the same address are a separate household."³³ To date, hundreds of individuals have filed appeals at the Board.

In May 2012, the Board made available a web-based application and issued a manual regarding its use to the ETCs, which allows the ETCs to access the Board's database to confirm the eligibility of applicants for Lifeline benefits.³⁴ The application provides a quick and easy means to verify an applicant's eligibility, while the applicant waits, based on the applicant's last names (both last names are required), Social Security Number, physical address, and telephone number (to which the benefits are associated). If no duplicate entry is found in the database, then the application issues a code that the ETC can use to receive the subsidy. If the database indicates that the applicant is not eligible for benefits, then the applicant is instructed that he/she may still obtain benefits by clarifying certain issues with the Board through the Board's review

³³ *Lifeline Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (Rel. Feb. 6, 2012), at ¶ 69.

³⁴ Exhibit A (dated March 2012).

process.³⁵ If the applicant is unable to travel to the Board's offices, the Board provides for review at a location within the applicant's municipality.

The Board's actions are wholly aligned with the Commission's Lifeline Reform Order in which the Commission explained that states have freedom and flexibility to oversee the Lifeline program: "[w]ithin the framework established by the 1996 Act and the *Universal Service First Report and Order*, each state administers its own program, *which has provided the states the freedom to experiment and develop new ways of making the program more effective and efficient.*"³⁶ The Commission also noted, with approbation, that some states had already begun developing systems to ensure efficient administration of the Lifeline program: "[a] number of states have or are about to move forward with their own systems for checking for duplicate Lifeline support. . . . We applaud the actions of these states and do not intend to inhibit the operation of these state efforts."³⁷ Consistent with its authority under Commonwealth law, and within the framework set forth by the Commission, the Board is taking steps to reform the Lifeline program in Puerto Rico.

IV. The Board Has Ensured that Eligible Recipients Retain Lifeline Benefits

To assist the Commission, below is a brief summary of the relevant dates and events:

- On January 30, 2012, the Board provided ETCs with the names of certain customers that needed to be removed from Lifeline rolls, *effective March 1, 2012*, based on duplicate social security numbers.

³⁵ Potential issues that could result in rejection by the application but approval upon review by the Board include: exception for people without two last names; multiple households at one address; or, physical address that is not recognizable to the application.

³⁶ *Lifeline Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012), at ¶ 19 (emphasis added).

³⁷ *Lifeline Reform and Modernization et al.*, WC Dkt. No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (Rel. Feb. 6, 2012), at ¶ 221.

- On February 7, 2012, the Board provided ETCs with the names of certain customers that needed to be removed from Lifeline rolls, *effective April 1, 2012*, based on duplicate residential addresses.
- On February 17, 2012, at a meeting with ETCs, the Board decided to reduce the amount of time an ineligible subscriber was barred from receiving Lifeline benefits from 12 months to 4 months.
- On March 7, 2012, the Board issued an Order in which, based on information from customers showing that duplicates were largely the result of fraudulent conduct by ETCs, it amended its eligibility rules so that an ineligible subscriber could continue to receive Lifeline benefits.
- On March 14, 2012, the Board provided ETCs with the names of additional customers that needed to be removed from Lifeline rolls, *effective May 1, 2012*, based on duplicate social security numbers.

While the Board's March 7, 2012 Order allowed previously ineligible subscribers to receive Lifeline benefits, it provided different mechanisms based on the period in which they were found to be ineligible.

Because some subscribers had been removed from the Lifeline rolls on March 1, 2012, the Board held that, for this group only:

beneficiaries who already lost their subsidy in March 2012 (customer base of December of 2011) may request it again. The Board will be the only entity authorized to announce said resolution to the consumers, by the means it deems appropriate.³⁸

Thus, for those residents who had already lost their Lifeline benefits (on March 1, 2012), the Board determined to: (a) make them eligible to continue receiving benefits; and (b) allow them to select the ETC of their choice.³⁹

³⁸ See The Telecommunications Regulatory Board of Puerto Rico's Response to the Request for Clarification and Declaratory Relief Filed by Tracfone Wireless, Inc., WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45 (filed April 17, 2012), Exhibit A (Board March 7, 2012 Order) at 2 (underlining in original).

³⁹ *Id.*

For the remaining ineligible subscribers – who had not yet been removed from the Lifeline rolls – the Board’s March 7, 2012 Order also allowed them to “remain with the service to which the subsidy was first applied, if so desired.”⁴⁰

Thus, in its March 7, 2012 Order, the Board resolved that all previously ineligible subscribers could continue receiving benefits. Those that had already been de-enrolled (on March 1, 2012) could decide which carrier to use going forward.

To ensure that eligible recipients who had been de-enrolled before March 2, 2012, were aware they are entitled to obtain benefits again by communicating directly with the Board, the Board prepared a notice (“March 26 Notice”) that was sent *only* to subscribers that had lost their benefit on March 1, 2012.⁴¹ The March 26 Notice makes clear that, “[b]y the end of February 2012, telephone service companies announced to some of their customers that they would lose the Lifeline subsidy *by March 1st 2012*, because a duplicity of subsidy was identified, as per the information obtained by the Telecommunications Board directly from the telephone companies.”⁴² It explains that, for those recipients, they can request a continuation of their benefits at the Board:

on March 7, 2012, the Telecommunications Regulatory Board of Puerto Rico issued a Resolution and Order, that leaves in suspense Rule 14.9(a) of the Provisional Amendment to the Universal Service Resolution applicable to those persons identified as having more than one subsidy under their Social Security number. In consequence, those who received the communication informing them that their subsidy service would be suspended by March 1, 2012, can immediately request, with the company of their

⁴⁰ *Id.* at 2.

⁴¹ The notice was also published in the newspaper on April 24, 2012.

⁴² *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service*, Request for Clarification and Declaratory Relief, WC Docket No. 11-42 *et al* (dated April 10, 2012), Attachment A (emphasis added).

preference, only one subsidy for wireline or wireless service per person, as long as they comply with the criteria for eligibility.⁴³

Because the Board has received significant information from subscribers preliminarily showing that some ETCs have engaged in alleged fraudulent and deceptive conduct, the Board's March 26 Notice appraises recipients that, if they receive different information from an ETC (*e.g.*, that the customer must receive service from one particular carrier or that the customer is eligible to receive multiple benefits), they can contact the Board.⁴⁴

As the Board's March 7 Order makes clear, "we deem it appropriate not to penalize consumers and, therefore, we resolved to leave pending our rule applicable to duplicates for social security of January 2012, in such a way that the customer can remain with the service to which the subsidy was first applied, if so desired." To be clear, for those consumers who were not de-enrolled on March 1, 2012, they can continue receiving their benefit and service from the first carrier.

Thus, not only has the Board thoroughly examined the rolls of Lifeline beneficiaries to eliminate the receipt of multiple benefits, but when it became clear that many of the recipients who had been de-enrolled had been receiving multiple benefits because they had been misled by the ETCs, the Board took action to ensure that those recipients had an expeditious process for re-obtaining benefits and were aware of that process.

CONCLUSION

The Board has thoroughly and systematically examined the rolls of recipients of Lifeline benefits to ensure that all recipients receive only those benefits for which they are eligible. Concurrently, the Board has ensured that eligible recipients do not lose benefits and that they

⁴³ *Id.*

⁴⁴ *Id.*

have a simple and expeditious means to retain benefits if they believe that have been disqualified from receipt of benefits inappropriately.

Respectfully submitted,


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Exhibit A

Entire Attachment Redacted for Public Inspection